

My Two Bits

Imagine this situation: Your business involves dealing with natural conditions hidden by earth, rock, and time. Despite the obvious risks that arise from the unknown, those relying on your services expect a perfect outcome. And "those relying on your services" include far more than your clients. Also in the mix: parties doing business with the owner (banks, insurers, prospective purchasers, stockholders), other parties involved in the project (designers, contractors, suppliers, and their employees and agents), and people who rely on the project once it's completed, along with their friends, relatives, neighbors, and various others in a position to suffer the torment of lost time, lost business, lost profit, and lost consortium. And, for the most part, you will find yourself liable to all these folks for as long as you live... a liability your heirs will inherit until your estate is closed, unless the plaintiff retains a higher-priced lawyer who knows how to reopen a closed estate (i.e., pierce the veil of death).

Scary, isn't it. But not to most of the intrepid engineers who get invoked in foundation design issues. Brave? Heck, no. They just didn't know about the scary stuff before they got involved, and by the time they learned, it was too late. Think about it: Who in their right mind would want to be liable to just about everyone for just about anything for just about forever, especially for the fees the engineers are limited to? (Even members of the Baghdad P.D. bomb squad would shy away from the work.) Still, any number of the engineers who do it don't have a problem. Some have learned the hard way. Others have learned from case histories that document the hard way. And what they've learned really forms a lesson for all construction professionals.

Want to survive? Rule 1: Understand the literal meaning of "the owner's in the driver's seat." Fact: The project is a vehicle owned and driven by the owner. As a construction professional, you are sitting in the front passenger seat; a.k.a., the "death seat." If there's an accident of any type, chances are you're going to go flying through the windshield

headfirst. Accordingly, what should you do before agreeing to get involved with a project? You should do what you’ve probably told your own young teen: “Never get in a car with someone you don’t know. Never get in the car with someone you know to be foolish or a show-off. Be sure the car is safe. *Always* wear your seatbelt. Don’t let the driver speed. If you’re unhappy with the way the person is driving, say so. Take the keys out of the ignition if you have too. Call us and we’ll pick you up or you can take a cab home.” Or words to that effect. Which is exactly what the case histories suggest you should be doing.

Consider the driver: What’s the organization that owns the project? What kind of reputation does it have. Who are the owner’s representatives? What kind of experience do they have. What are their reputations? ***Consider the vehicle:*** Where is the owner’s project financing coming from? Does the owner know where it’s going; i.e., has its representative developed a project plan? If so, can you see it? Who else is in the vehicle with you? What kind of reputation do they have?

If you have concerns about the vehicle or its driver, chances are you should not get in. Sure you need to be able to get from here to there, but maybe you have a more reliable friend who has a car and, if not, perhaps you could do more to cultivate relationships with reliable people who have cars, so you can get to where you want to go in safety and comfort. After all, if you’re forced to rely on somewhat reckless drivers and/or those who own “clunkers,” chances are you’re going to be involved in an accident or stranded in the middle of nowhere.

Have you ever heard or said this? “But gee, Mom and Dad, all the other kids get to ride with whomever they want and they don’t have all these dumb restrictions. And they don’t have any accidents or any problems, it seems like. C’mon, let me be like all the other kids. Otherwise I’ll never get anywhere.”

And this was probably the response: “Number one, you know that isn’t true. I know there are parents out there who care about their children just as much as we do.

“Number two, vehicle crashes are the leading cause of teenage death. How many of those kids, if they had to do it all over again, would have gotten into that vehicle or would have stayed in it after they knew something was going wrong?

“And number three, just because some of the people you know do something stupid, that’s no excuse for you doing the same thing.”

Then this rejoinder: “But, aw gee, Mom and Dad: It’s just so embarrassing,” which sounds remarkably like, “We don’t ask all those questions and do all that examination before we accept a new client and its project. We don’t want to embarrass the client representative and frighten good business away.” I’ve heard that hokum innumerable times and the truth, so far as I can tell, is that it’s the construction professionals who are embarrassed, just like the put-upon teenagers. Fact: Asking questions will not embarrass “good business” because “good business” always asks questions before getting into someone else’s vehicle for the first time, and almost always performs a quick “look-see” before getting into it each successive time.

Through a survey conducted to determine why its insureds with no claims fared so well, Terra Insurance Company discovered that a key trait was meticulously careful selection of clients and projects. In other words, those with the best claims histories were unwilling to get into cars with strangers unless they knew all about them first. Which is more or less what you tell your kids.

Listen to yourself.